



IOWA NORTHERN RAILWAY COMPANY

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CEDAR RAPIDS, IOWA 52401
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231137

October 17, 2011

VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW, Room 1034
Washington, DC 20024

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Office of Proceedings
OCT 19 2011
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Re: Finance Docket No. 35511
IOWA NORTHERN RAILWAY COMPANY –
TRACKAGE RIGHTS EXEMPTION-
Pursuant to 49 C.F.R. Section 1180.2 (d)(7)

Dear Ms. Brown:

On May 11, 2011 a Verified Notice of Exemption concerning a grant of overhead trackage rights by Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific to Iowa Northern Railway Company was filed with the Board in Finance Docket No. 35511. By this letter the Verified Notice of Exemption is being supplemented by this filing in the above-captioned proceeding of an enclosed original and ten copies of a redacted version of the executed Trackage Rights Agreement dated as of September 16, 2011.

If you have any questions regarding this filing, please feel free to contact me. Your assistance is appreciated.

Sincerely yours,

T. Scott Bannister, Esq.
Attorney for Applicants

TSB:fcm

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TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT is made as of this 16th day of September, 2011 between **DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**, a Delaware corporation and having its office at 140 N. Phillips Avenue, Sioux Falls, SD 57104 (hereinafter "CP") and **IOWA NORTHERN RAILWAY COMPANY**, an Iowa corporation and having its office at 305 Second Street, SE, Suite 400, Cedar Rapids, Iowa, 52401 (hereinafter "IANR");

WHEREAS:

A. CP has agreed to grant to IANR, and IANR has agreed to acquire from CP, trackage rights over CP's railroad lines between the connection with the UP's former Forest City line in Garner, IA, and the connection with IANR mainline at Nora Springs, IA, as defined below as "Subject Trackage" in Article 1 of this Agreement; and

B. The Parties desire to set forth the terms and conditions upon which CP shall grant, and IANR shall exercise, such trackage rights;

NOW THEREFORE, in consideration of the premises and of all the mutual covenants herein set forth, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 **Defined Terms.** As used in this Agreement, including the Recitals hereto, the following terms shall have the meanings set out below:

A. **"Affiliate"** means with respect to a party, any person that controls, is controlled by or is under common control with that party.

B. **"Cars"** means each loaded or empty railway freight car, locomotive or similar equipment, handled by IANR over the Subject Trackage.

C. **"Capital Improvements"** means Improvements which require capital investments and expenditures to materially improve or upgrade the Subject Trackage, as defined by CP capital accounting procedures.

D. **"Hazardous Substance"** means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing,

- (i) radioactive, explosive, poisonous, corrosive, flammable or toxic substances;
- (ii) substances that endanger the health and safety of persons; and
- (iii) substances declared to be hazardous, toxic or dangerous under any law or regulation now or hereafter enacted by any governmental authority having jurisdiction.

E. **"Emergency Response Plan"** means the emergency response plan to be prepared by IANR as described in Article 9.2.

F. **"Improvements"** means any building, structure, trackage or any other work of a physical character.

G. **"Trackage rights"** means the non-exclusive trackage rights described in Article 2.1.

H. **"Trackage rights Fee"** means the fees payable by IANR to CP described in Article 11.2.

I. **"Operating Rules"** means CP's operating and safety rules, timetables, special instructions, bulletins, general orders, authoritative directions and amendments, supplements and replacements thereto as communicated from time to time by CP's designated operating officer to IANR's designated operating officer.

J. **"Operating Window"** means the daily time period or periods designated by CP that IANR may operate on the Subject Trackage.

K. **"Subject Trackage"** means the portion of CP's Sheldon Subdivision between the points designated as Point "A", being approximately mile post 137.50 near Garner, IA, and Point "B" being approximately mile post 116.70 at the connection with CP's Mason City Subdivision; and between Point "B" near Mason City and Point "C", being approximately mile post 107.30 near Nora Junction at the connection with the IANR as shown in Schedule "A", a total distance of approximately 30.2 miles. The Subject Trackage includes all track, track connections, facilities and appurtenances, signals and switches located between Points A and C, as such facilities and appurtenances, signals and switches are from time to time added to, modified, or removed at the sole discretion of CP.

L. **"Trains"** means all trains, locomotives, Cars, cabooses and equipment owned, leased, used or otherwise in the possession of, control of or under operation by IANR.

1.2 **Schedules.** The following Schedules are attached to and form a part of this Agreement:

<u>Schedule</u>	<u>Description</u>
A	Subject Trackage Sketch Plan
B	Rate Escalation

ARTICLE 2

TRACAGE RIGHTS

2.1 Subject to the terms and conditions herein provided, CP hereby grants to IANR the non-exclusive right to operate its Trains with its own crews over the Subject Trackage for the sole purposes of bridging IANR traffic between Garner, IA and the connection with the IANR mainline at Nora Junction, IA (the **"Trackage rights"**). IANR's use of the Subject Trackage shall be in common with CP and any other user of the Subject Trackage and the rights of CP and such other user to use the Subject Trackage shall not be diminished by this Agreement. In the event of conflict between the

maintenance provisions in this Agreement and any other agreement governing maintenance at Nora Springs, the original document shall be the governing document.

2.2 In order to avoid conflicting movements and ensure the safe operation of both parties on the Subject Trackage, the Trackage rights are subject at all times to the following conditions:

A. [REDACTED]

B. [REDACTED]

2.3 IANR shall be solely responsible for securing any other operating rights and privileges required to operate its trains to and from the Subject Trackage.

ARTICLE 3 **RESTRICTIONS ON USE**

3.1 The Trackage rights granted herein are only for the movement of overhead freight traffic. IANR shall not have the right to:

A. set off, pick up, or store equipment or switch industries upon all or any part of the Subject Trackage, except as necessary for the handling of locomotives, Cars or cabooses bad ordered en route;

B. serve any industry, team or siding track now existing or hereinafter located along the Subject Trackage;

C. permit or admit, without permission in writing from CP, any third party to the use of all or any part of the Subject Trackage, nor contract, or make any agreement to provide haulage over the Subject Trackage of Trains or Cars of any third party which in the normal course of business would not be considered as the Trains or Cars of IANR;

D. interchange with any carrier, other than CP, along the Subject Trackage;

E. [REDACTED]

F. enter or exit the Subject Trackage at any point other than those designated on Schedule A hereto;

G. interfere with the loading or unloading operations of any shipper located adjacent to the Subject Trackage;

H. obstruct or leave any Train or locomotive unattended on the Subject Trackage, or stop its Trains or locomotives on the Subject Trackage except in the case of mechanical failure or emergency;

- I. construct or alter tracks connecting to the Subject Trackage, including the construction, installation or alteration of any switches from the Subject Trackage without the express written consent of CP;
- J. construct, erect or place, or cause to be constructed, erected or placed on or near the CP Trackage any structure, signage, fixture or any other work without the prior written consent of CP;
- K. conduct passenger or commuter operations on the Subject Trackage; or
- L. fuel locomotives on the Subject Trackage, or load, unload or store any Hazardous Substance on the Subject Trackage, except as permitted under this Agreement and in accordance with the terms and conditions herein.

ARTICLE 4

MAINTENANCE OF CONNECTIONS TO SUBJECT TRACKAGE

4.1 Existing connections to the Subject Trackage or related facilities, which are jointly used by CP and IANR under other existing agreements, shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.

4.2 If, in the opinion of IANR,

- A. a new or upgraded connection is required at Point A or Point C for permitting entry to or exit from the Subject Trackage, or,
- B. other upgrading, including but not limited to capital capacity, switches, power switches, signals, communications and other works is required for operational efficiency of the IANR Service,

then CP may, in its sole discretion, make such improvements, and IANR shall pay to CP the entire cost of such improvements, including overhead and administrative costs, within 30 days of receiving an invoice. Such improvements as may be requested by IANR will not unreasonably be denied by CP.

ARTICLE 5

MAINTENANCE OF SUBJECT TRACKAGE

5.1 IANR's use of the Subject Trackage shall be at its own risk and on an "as is" basis. Notwithstanding any other provision of this Agreement, IANR shall not by reason of failure or neglect on the part of CP to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CP or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees, for any injury to or death of any person or persons whatsoever, or for any damage to or loss or destruction of any property whatsoever, or for loss of any nature suffered by IANR resulting from such failure or neglect including without limitation any interruption or delay.

5.2 Nothing in this Agreement shall preclude CP from discontinuing or abandoning rail operations on any part of the Subject Trackage at any time, subject to CP fulfilling the applicable requirements set out by the Surface Transportation Board. Upon such discontinuance or abandonment, this Agreement shall automatically terminate as to the portion of the Subject Trackage that has been

discontinued or abandoned. In the event CP abandons any part of the Subject Trackage, IANR shall have a sixty (60) day conditional option to purchase the property at Net Liquidation Value. As a condition for sale of the Subject Trackage, IANR shall likewise be required to continue to operate the Subject Trackage as a line of railroad. The term "Net Liquidation Value" as used in this Article means the fair market value of land and track components less the estimated cost of removal.

5.3 The construction, maintenance, repair and renewal of the Subject Trackage together with the discretion to add modify, or remove facilities and appurtenances, signals and switches, along the Subject Trackage shall be under the exclusive direction and control of CP. CP shall make any additions, modifications, or removals to or along the Subject Trackage which CP deems necessary or desirable for the safe, efficient, and economical use of the Subject Trackage by the Parties, and such additions or modifications shall become part of the Subject Trackage upon completion of, construction.

ARTICLE 6

ADDITIONS, ALTERATIONS AND CAPITAL IMPROVEMENTS

6.1 IANR will be required to share in the cost of Capital Improvements to the Subject Trackage, other than those covered by Article 4.2 above, to the same extent as IANR's car count share represents to the total car count involved over the Subject Trackage for the twelve (12) month period immediately prior to the month that work on the project is commenced. The capital expenditure amount to be charged shall be the net cash amount of the project(s) as reflected in the Roadway Completion Report for said improvement applicable to the Subject Trackage.

9.2 The use of the Subject Trackage by any third party shall be attributed to CP for purposes of computing respective cars for purposes of Article 6.1. CP shall advise IANR in advance of any Capital Improvements contemplated under Article 6.1. CP's failure to advise IANR of any capital improvements and/or additions shall not relieve IANR from assuming its share of expense under Article 6.1.

ARTICLE 7

OPERATION AND MANAGEMENT OF SUBJECT TRackage

7.1 The management and operation of the Subject Trackage shall be under the exclusive direction and control of CP. CP shall have the unrestricted right to change the management and the operations on and over the Subject Trackage as it, in its sole judgment, may deem necessary, expedient or proper for the operation of the Subject Trackage.

7.2 IANR shall comply with all applicable laws, regulations and rules respecting the operation, condition, inspection and safety of its Trains, while such Trains are being operated over the Subject Trackage. Notwithstanding any other provisions herein, IANR shall indemnify, protect, defend, and save harmless CP and its subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon CP or its subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, regulations and rules by any public authority or court of competent jurisdiction, when attributable to the failure of IANR to comply with its obligations in this regard.

7.3 When operating over the Subject Trackage, IANR's locomotives and crews shall be equipped with radios that are compatible with CP's radios to communicate with CP and any other operators on

the segments of Subject Trackage on radio frequencies then normally used in directing train movements on the Subject Trackage.

7.4 IANR's locomotives shall be adequately powered to maintain the maximum authorized freight speeds as provided by the Operating Rules, with a minimum requirement of horsepower per ton rating of 1 to 1 and equipped with such safety equipment that is required by law or instruction for the operation over any or all of the Subject Trackage.

7.5 IANR, at its sole expense, shall install and maintain upon its trains, locomotives, cabooses and cars such equipment or devices including but not limited to Positive Train Control (PTC) and end of train units (EOT's) with functioning telemetry as may now or in the future be mandated by the Federal Railroad Administration, or other governing body having authority, for the safe and efficient operation of trains over the Subject Trackage.

7.6 The operation of IANR over the Subject Trackage shall at all times be in accordance with the Operating Rules, provided however that the Operating Rules shall be reasonable, just and fair between all parties using the Subject Trackage and shall not unjustly discriminate against any of them.

7.7 IANR trains while operating over the Subject Trackage shall not include locomotives, Cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by the Operating Rules without the prior consent of CP.

7.8 IANR shall ensure that its employees engaged in the operation of IANR's trains, locomotives, Cars and equipment over the Subject Trackage are qualified to perform such operations and are familiar with CP's Operating Rules and the physical characteristics of the Subject Trackage. CP may require IANR to provide proof of certification or qualifications by such employees, and CP will have the right to audit IANR at any time to verify that IANR and its employees are in compliance with the obligations of this Article, and that IANR has appropriate processes and programs in place to ensure compliance with this Article.

7.9 If any employee of IANR neglects, refuses or fails to abide by the Operating Rules, such failure shall be a material failure under Article 13, and CP shall in writing so notify IANR and IANR shall promptly provide CP with i) a summary identifying the material failure and its cause, ii) details of the actions that it has taken or will take to correct the failure, and iii) assurance that its course of corrective action(s) will prevent the failure from occurring again in the future. Notwithstanding the foregoing, CP may terminate this Agreement in accordance with Article 13.3(E) if it reasonably believes that the material failure was not appropriately remedied. Prior to terminating this Agreement unilaterally, CP will act in good faith to resolve any failure by IANR under the terms of Article 15.1(A) of this Agreement. IANR agrees not to seek arbitration in any dispute that arises out of this Article 7.9 and will agree to abide by the resolution agreed to between the appropriate Interline Directors.

7.10 IANR shall conduct its operations in an efficient manner with a view to maximizing the capacity of the Subject Trackage and ensure that its crews carry out the prompt, efficient and safe movement of IANR Trains over the Subject Trackage

7.11 In the event that a Train of IANR shall be forced to stop on the Subject Trackage due to mechanical failure of IANR's equipment or any other cause not resulting from an accident or derailment, and such Train is unable to proceed, or if a Train of IANR fails to maintain the speed required by CP on the Subject Trackage, or if in emergencies, crippled or otherwise defective Cars are set out of IANR's trains on the Subject Trackage, CP shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such Trains, locomotives or Cars, or to properly move the disabled equipment off the Subject Trackage, and IANR shall reimburse CP for the cost of rendering any such assistance.

7.12 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective Cars in order to move them off the Subject Trackage, such work may be done by CP, at its option, and IANR shall reimburse CP for the cost thereof.

ARTICLE 8

CLEARING OF WRECKS

8.1 Whenever IANR's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, CP shall perform or provide such service, including the repair and restoration of roadbed, track and structures, except that CP in its sole discretion may request a third party to perform such rerailling service at IANR's sole expense; provided, however, in case of a minor derailment where the derailed equipment can be promptly rerailed by reraillers or blocking by IANR employees, then in such event IANR may, at its sole expense, reraill such equipment unless CP's supervisory employees direct otherwise. In any case of IANR knowledge of any derailment or incident, involving IANR on the Subject Trackage, IANR shall immediately notify CP.

8.2 The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever, successful labor claims against CP, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be invoiced to IANR and paid by IANR in accordance with the provisions of Article 11 hereof. All locomotives, Cars, and equipment that are owned by or under the management and control of or used by IANR at the time of such wreck, shall be promptly delivered to IANR, unless the parties otherwise agree.

ARTICLE 9

ENVIRONMENTAL

9.1 In the event that IANR is required to transport Hazardous Substances over the Subject Trackage, IANR shall:

- A. comply with all applicable federal, state and municipal laws, rules and regulations including, but not limited to, applicable rules and regulations as set forth by the, Federal Railroad Administration (FRA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Surface Transportation Board, and the Association of

American Railroads (AAR) respecting the handling and transporting of Hazardous Substances; and

- B. ensure its personnel comply with such applicable laws, rules and regulations and meet all the requirements and qualifications for training and certification set forth by such laws.

9.2 IANR shall prepare and have at all times, an Emergency Response Plan with respect to its response to incidents or derailments involving Hazardous Substances over the Subject Trackage and upon request provide a copy to CP. The Emergency Response Plan must include at a minimum:

- A. reporting and response procedures in the event of a derailment, accident or spill on the CP Trackage;
- B. emergency response service providers and contacts and their phone numbers; and
- C. incident reporting phone numbers including phone numbers for CP incident reporting and local CP personnel.

9.3 In the event any accident or derailment involving IANR rail cars, including rail cars carrying Hazardous Substances shall occur on any segment of the Subject Trackage, IANR agrees to:

- A. immediately notify local emergency response service providers (including the local fire stations) in accordance with its Emergency Response Plan, and ensure that such local emergency response service providers have appropriate information.
- B. immediately report any release, leak, deposit or spill of a Hazardous Substance (e.g., fuel spill from an accident) to CP (Network Management Centre -Calgary - 1-800-795-7851) and/or such other number as directed by CP in writing), whether or not such releases are required to be reported to any federal, state or local authority, and to any regulatory authorities as required by law.
- C. promptly respond to an accident, or a leak, spill or deposit of any substance (including without limitation any Hazardous Substance, waste or pollutant), except to the extent such leak, spill or deposit is *de minimis* in nature and results from the day to day operation of Trains by IANR over the Subject Trackage. IANR shall take all reasonable actions to contain the spill and respond in accordance with its Emergency Response Plan; provided, however that CP may elect to reasonably remediate, repair and restore the roadbed, track and related structures impacted by any Hazardous Substance, at the expense of the IANR.
- D. provide a written follow-up report to CP within five (5) working days of any release, leak, deposit or spill on the Subject Trackage, or any event on or affecting CP property which constitutes an offence or is reportable under any laws, by-laws, or regulations relating to the protection of the environment, or is in breach thereof. Such follow-up report will describe the incident, substance and volume released, and measures undertaken or planned to cleanup and remove the released substance and any contaminated soil, water and materials and waste.

- E. provide CP with copies of any and all reports made to any governmental agency that relate to such incidents and/or releases. In addition, IANR shall provide CP with a copy of any alleged violation of applicable environmental laws relating to such incident on the Subject Trackage, as well as a copy of any written responses made by IANR to governmental authorities regarding said violations.
- F. commence and complete, at CP's request, the cleanup, disposal, and remediation of any spill or environmentally unsound condition occurring on the Subject Trackage as a result of IANR's operations over the Subject Trackage. IANR shall completely clean up any such spill or condition; shall dispose of any contaminated soil or waste in a properly licensed disposal facility; and shall replace contaminated soils with clean fill as appropriate under the circumstances. IANR shall demonstrate to CP's reasonable satisfaction that any impacted lands and any impacted adjacent lands have been restored to a condition existing immediately prior to the contamination
- G. if CP and IANR are in disagreement as to whether any such release has been completely cleaned up, the contaminated soil or waste properly disposed of and replaced with appropriate clean fill, to retain a reputable environmental consulting firm to review IANR's activities and report whether IANR has fulfilled its obligations. If IANR's obligations have not been fulfilled, IANR shall take further action as is necessary to rectify any deficiencies and obtain a report from the environmental consultant verifying the same.
- H. be solely responsible for all costs related to the clean-up and remediation of any releases or incidents resulting from IANR's operations on the Subject Trackage.

9.4 CP may from time to time perform inspections and environmental, safety, risk and security assessments of the Subject Trackage. CP may at any time implement any environmental, safety or security measures, procedures or requirements that it considers necessary or desirable, in its reasonable opinion. CP agrees to notify IANR regarding any such measures, procedures or requirements and IANR agrees to cooperate, as necessary in implementing such measures.

9.5 The provisions of this Article 9 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 10 **MILEAGE AND CAR HIRE**

10.1 All mileage and car hire charges accruing on cars in IANR's Trains on the Subject Trackage shall be on IANR's account, to be reported and paid by IANR.

ARTICLE 11 **BILLING AND PAYMENT OF CHARGES**

11.1 IANR shall on or about the fifteenth (15th) day of each month provide CP with an accounting of its use of the Subject Trackage for the prior month. Such accounting shall be furnished to CP's Manager – U.S. Interline Agreements or designated representative and shall include a detailed listing of loaded and empty Car movements over the Subject Trackage. Such detailed listing, to the extent available, shall be forwarded to CP in an electronic format and shall include car initial, numbers and contents, date of movements and the points traversed over the Subject Trackage and such other

information as CP may reasonably request. The parties shall exchange data on all loaded and empty cars electronically or by any other means as mutually agreed.

11.2 The Trackage rights Fee payable by IANR to CP for the Trackage rights shall be as follows:

A. [REDACTED]

B. [REDACTED]

11.3 The Trackage rights Fee shall be subject to annual escalation using Table A - West - Annual Indexes of Chargeout prices and Wage Rates (1977=100), Materials prices, wage rates and supplements combined (excl. fuel) upon the first day of each July following the anniversary date of this Agreement, as shown in Schedule B. Should this index result in a negative index, the Trackage rights Fee payable by IANR pursuant to Article 11.2(A) shall never drop below the Trackage rights Fee that is in effect on the Effective Date.

11.4 The Trackage rights Fee that IANR is required to pay to CP under the provisions of this Agreement is in addition to any and all other costs, expenses and charges specifically provided for in this Agreement.

11.5 The parties expressly agree that the Trackage rights Fee to be paid by IANR shall not, in any case, include any cost or expense which may be incurred by CP on account of loss of or damage to property, or injury to or death of any person or persons arising out of, or in connection with, the operation by IANR upon or over the Subject Trackage and IANR shall indemnify CP as provided for in Articles 9 and 12 herein.

11.6 Invoices rendered pursuant to the provisions of this Agreement, other than the Trackage rights Fee, shall include direct labor and material costs, together with the customary surcharges, overhead percentages and equipment rentals as specified at the time any work is performed by CP for IANR.

11.7 The payment of invoices by IANR shall not be delayed or payment refused or reduced on the face amount of the invoice rendered due to errors in supporting details which are not material relative to the invoiced amount, but the invoice shall be paid as rendered and exception to charges shall be taken in writing addressed to the officer of CP responsible for the issuance of the invoice; provided that no exception to any charge shall be honored, recognized or considered if filed after the expiration of one (1) year from the last day of the calendar month during which the invoice containing said charge was rendered.

11.8 CP reserves the right to audit the records and activities of IANR solely for the purpose of verifying IANR's compliance with the provisions of this Agreement. Without limiting the generality of the foregoing, IANR shall keep and maintain true and correct books, records and accounts with respect to its volume of Cars along with any annual statements and summaries, for a period of three (3) years after the Term of this Agreement. IANR shall, upon request of CP, make available and permit CP during such period to inspect, make copies of, and audit all such records. If there is any revision to charges as a result of an audit, payment shall be made within thirty (30) days of the audit. The provisions of this Article 11 shall survive the termination of this Agreement.

ARTICLE 12

LIABILITY AND INSURANCE

As between the Parties hereto, responsibility for any loss or destruction of, or damage to, any property whatsoever, any damage to or destruction of the environment (including without limitation land, air, water, wildlife, and vegetation), and any injury to or death of any person or persons whomever (including employees of CP and IANR), resulting from, arising out of, incidental to or occurring in connection with this Agreement (in each case, "Loss or Damage"), shall be allocated as follows, without regard to considerations of fault or negligence (except as otherwise provided in Article 12.5 and Article 12.6 hereof):

12.1 For purposes of this Article 12, the following words shall have the meanings set forth in this Article 12.1:

A. "Cars" shall mean loaded and empty freight cars, trailers and containers (including lading) and locomotives. "IANR Cars" shall mean Cars in the revenue and/or car hire account of IANR. "CP Cars" shall mean Cars in the revenue and/or car hire account of CP or a Foreign Railroad (as defined below).

B. "Equipment" shall mean cabooses, hi-rail vehicles, track inspection equipment and other non-revenue vehicles and machinery (other than locomotives) capable of being operated on railroad tracks that, at the time of an occurrence, are (i) being operated on the trackage upon which such occurrence takes place, or (ii) are located on the trackage upon which such occurrence takes place, or on adjoining right-of-way, for the purpose of maintenance or repair thereof or the clearing of wrecks thereon. "IANR Equipment" shall mean Equipment operated by or in the account of IANR and "CP Equipment" shall mean Equipment operated by or in the account of CP.

C. "Foreign Railroad" shall mean a railroad other than (i) CP and its Affiliates or (ii) IANR.

12.2 Whenever Loss or Damage occurs as a result of an incident involving only one train, and the involved train is a train operated by IANR, then IANR shall assume and bear all liability for Loss or Damage resulting from or arising out of such incident, including without limitation Loss or Damage to IANR Cars, IANR Equipment, CP Cars, CP Equipment, third party Cars and Equipment, trackage, property and any injury or death of any person or persons.

12.3 Whenever Loss or Damage occurs as a result of an incident involving more than one train, and at least one of such involved trains is a train operated by IANR, and at least one of such involved trains is a train operated by CP, then IANR shall assume and bear all liability for Loss or Damage to Cars and Equipment (including CP Cars and CP Equipment) moving on such train(s) operated by IANR, and CP shall assume and bear all liability for Loss or Damage to Cars and Equipment (including IANR Cars and IANR Equipment) moving on such train(s) operated by CP. In such circumstances, as between IANR and CP, any Loss or Damage to trackage or to property, and any injury or death of any other person or persons, so occurring shall be allocated between IANR and CP in proportion to the number of Cars in the involved trains operated by each of IANR and CP.

12.4 For the purposes of assigning responsibility for Loss and Damage under this Article 12, as between IANR and CP trains, Cars and Equipment of a Foreign Railroad shall be considered to be the trains, Cars and Equipment of CP.

12.5 Notwithstanding anything to the contrary in this Article 12, whenever Loss or Damage occurs, and such Loss or Damage is attributable solely to the gross negligence or willful or wanton misconduct of only one of the Parties to this Agreement, and such gross negligence or willful or wanton misconduct is the direct or proximate cause of such Loss or Damage, then the Party to which such gross negligence or willful or wanton misconduct is attributable shall assume all liability, cost and expense in connection with such Loss or Damage. The Parties agree that, for purposes of this Article 12.6, "gross negligence or willful or wanton misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness."

12.6 Notwithstanding any provision of this Article 12 to the contrary, each Party shall assume and bear all responsibility for any Loss or Damage caused by acts or omissions of any of its employees while under the influence of drugs or alcohol.

12.7 If any suit or action shall be brought against any Party for Loss or Damage which under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said responsible Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay its share of the judgment and the costs and expense incurred in such suit in accordance with the terms of this Article 12.

12.8 In every case of death or injury suffered by an employee of CP or IANR, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal worker's compensation, occupational disease, employers' liability or other law, and one or more of the Parties under provisions of this Agreement is/are required to pay same or a portion of same in instalments over a period of time, said Party or Parties shall not be released from paying any such future instalment(s) by reason of the expiration or other termination of this Agreement prior to any of the respective date(s) upon which any such future instalments are to be paid.

12.9 Whenever any liability, cost or expense is assumed by or allocated to a Party under this Article 12, that Party shall (i) forever protect, defend, indemnify and save harmless the other Party and its Affiliates, and their respective directors, officers, agents and employees from and against that liability, cost and expense, regardless of whether such liability, cost and expense was caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the indemnitees or their directors, officers, agents or employees, and (ii) defend such indemnities against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party.

12.10 Each Party shall investigate, adjust and defend all cargo related claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709.

12.11 All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit (other than cargo-related claims made against a Party by a customer whose traffic was moving in the revenue and/or car hire account of such Party) under this Agreement shall be included as costs and expenses in applying the liability provisions of this Article 12; provided, however, that

salaries or wages of full-time agents, full-time attorneys and other full-time employees of any Party engaged directly or indirectly in such work shall be borne by such Party.

12.12 No Party shall settle or compromise any claim, demand, suit or cause of action (other than a cargo-related claim filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709) for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds Twenty-Five Thousand Dollars (US) (\$25,000).

12.13 IANR shall, at its own expense, obtain and maintain during the term of this Trackage rights Agreement and any subsequent extension(s), in a form and with an insurance company satisfactory to CP, policies of:

- A. Commercial General Liability (C.G.L.) or Railroad Liability insurance with a limit of not less than [REDACTED] personal injury, bodily injury, or damage to property including loss of use thereof. This policy shall by its wording or by endorsement include but not be limited to the following:
- a. CP and its associated or affiliated companies (and the directors, officers, employees, agents and trustees of all of the foregoing) as an additional insured with respect to obligations of IANR under this and incidental thereto;
 - b. CP and its associated or affiliated companies (and the directors, officers, employees, agents, and trustees of all of the foregoing) shall be waived of any and all subrogation in the event of damages, losses, incidents, claims and potential claims;
 - c. "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
 - d. blanket contractual liability, to include the insurable liabilities assumed by IANR under this Agreement;
 - e. products and completed operations;
 - f. Federal Employers Liability Act (F.E.L.A.); and
 - g. sudden and accidental pollution, or named perils pollution including the release or dispersal of pollutants as a result of a collision, overturning or derailment of any vehicle or railway rolling stock.
- B. Automobile Liability insurance covering bodily injury and property damage in an amount not less than [REDACTED] covering the ownership, use and operation (including the loading and unloading) of any motor vehicles and trailers which are owned, non-owned, leased or controlled by IANR and used in regards to this Trackage rights Agreement.

- C. Property "All Risks" insurance covering IANR's owned property and the property of CP in the care, custody, or control of IANR, or for which IANR has assumed liability, on a replacement cost basis. With respect to the property of CP, such policy shall contain a loss payable clause in favor of CP, and include CP as an additional insured. This policy shall also provide a waiver of subrogation in favor of CP and its associated or affiliated companies (and the directors, officers, employees, agents and trustees of all of the foregoing).

IANR shall, prior to the performance of any service under this Trackage rights Agreement, provide CP with a copy of the certificate(s) of insurance evidencing the above insurances. CP shall be under no obligation to examine such certificate(s) or to advise IANR in the event its insurance is not in compliance herewith. Acceptance of such certificate(s) which are not compliant with the stipulated coverages shall in no way imply that CP has waived its insurance requirements.

IANR agrees that the insurance coverage required to be maintained by it under the provisions of this Agreement shall not limit or restrict its liabilities under this Agreement.

IANR agrees that the insurance it maintains is primary and not excess of any other insurance that may be available. IANR further agrees that excess insurance that it maintains will be primary as to any other insurance that may be available. The policies shall be endorsed in accordance with this paragraph.

IANR shall provide CP with written notice and all reasonable particulars and documents related to any damages, losses, incidents, claims and potential claims concerning this Trackage rights Agreement as soon as practicable after the damage, loss, incident or claim has been discovered. IANR is responsible for any deductible and excluded loss under the insurance. The deductible in any insurance policy shall not exceed such maximum amount that a reasonably prudent business person would consider reasonable.

The policies shall be endorsed to provide CP with not less than thirty (30) days written notice in advance of cancellation, material change or amendments restricting coverage. Such notice shall be by registered mail and should be to the specific attention of: AVP Strategic Network Development, Canadian Pacific Railway, Gulf Canada Square, 401 – 9th Avenue S.W., Calgary, Alberta T2P 4Z4.

If IANR fails to maintain the insurance required under this Trackage rights Agreement, CP may at its option terminate this Agreement.

ARTICLE 13

TERM AND TERMINATION

13.1 This Agreement shall be effective the day and the year first written above and shall remain in full force and effect until mutually terminated by the Parties.

13.2 Notwithstanding any other provision in this Agreement, IANR may terminate this Agreement on ninety (90) days prior written notice to CP.

13.3 CP may, at its sole option and without restricting any other right or legal remedy it may have, immediately wholly or partially terminate this Agreement upon written notice to IANR if:

A. IANR breaches the provisions of Article 7.9 or fails to observe or perform any provision of this Agreement, and such breach continues for a period of thirty (30) calendar days after CP shall have first sent written notice to IANR of such breach;

B. IANR fails to maintain any governmental or regulatory approval required in order to conduct railway operations on the Subject Trackage, and such failure continues for a period of (60) sixty calendar days after CP shall have first sent written notice to IANR of such failure;

C. IANR or any Affiliate or Parent Company becomes insolvent or makes an assignment in bankruptcy or a general assignment for the benefit of creditors or a proposal under any applicable bankruptcy legislation, or if a petition in bankruptcy is filed or presented against IANR, or if IANR otherwise becomes subject to or institutes any proceedings seeking to adjudicate it as bankrupt or insolvent, or if a receiver of any of IANR or Affiliate or Parent Company undertaking, property or assets is appointed, or if an order is made or a resolution is passed or proceedings are instituted for the winding up or dissolution of IANR;

D. IANR ceases or threatens to cease carrying on its business;

E. IANR fails to observe or perform any of the terms of this Agreement where such failure, in the reasonable opinion of CP, creates a danger or raises serious safety concerns with respect to CP's operations;

F. CP obtains authorization to abandon all or a portion of the Subject Trackage;

13.4 Termination of this Agreement for any reason shall not relieve or release any party hereto from any obligation assumed or from any liability which may have arisen or been incurred by any party under the terms of this Agreement prior to the termination hereof.

13.5 In the event of termination of the trackage rights over all or a portion of the Subject Trackage, IANR shall cooperate with CP in obtaining STB discontinuance authority for the trackage rights terminated under this Agreement.

ARTICLE 14

CONFIDENTIALITY

14.1 During the Term and for a period of ten years thereafter, the parties agree to keep this Agreement completely confidential and not to disclose this Agreement or any part thereof to any third party or other entity, for any reason, without the express written consent of the other party, provided always that CP may disclose the existence of this Agreement (but not its terms) to regulatory authorities and that CP may disclose the terms of this agreement without IANR's consent in the event that CP enters into discussions to sell, lease or otherwise dispose of all or a portion of the Subject Trackage. Except as herein permitted, the parties acknowledge and agree that the disclosure of this Agreement or any portion thereof will be prejudicial to either party, and may cause irreparable harm that is not fully or adequately compensable by money damages. In the event of an unauthorized disclosure of this Agreement or any portion thereof to any third party, the parties further agree that non-breaching party may immediately pursue any remedies available at law or equity.

ARTICLE 15
DISPUTE RESOLUTION

15.1 In the event of any dispute arising from and relating to this Agreement, the following dispute resolution process is to be used prior to instituting any formal legal action:

A. disputes are to be escalated to the respective Interline Directors of IANR and CP or the equivalent thereof who will have 30 days to negotiate in good faith to resolve the dispute;

B. for disputes not resolved after 30 days, the entire or remaining issues in dispute will be escalated to the Vice Presidential level, who will have 30 days to negotiate in good faith and resolve the issues in dispute;

C. In the event such officers are unable to resolve the dispute within thirty (30) days, either Party may submit the dispute for binding arbitration by a single arbitrator before the American Arbitration Association under the Commercial Arbitration Rules. The arbitrator shall be experienced in railroad matters and transportation law. The decision of the arbitrator shall be rendered within ninety (90) days of the Parties' submissions and shall be final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The reasonable compensation, costs and expenses of the arbitrator, if any, shall be borne by Owner and User, with each paying fifty percent (50%) of such compensation, costs and expenses. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision of the arbitrator.

ARTICLE 16
NOTICES

16.1 Any notice request, demand or other document required or permitted hereunder shall be in writing and shall be deemed to have been duly given if delivered in person, or by courier or facsimile and addressed to the other party as follows:

if to CP:

Canadian Pacific Railway Company
Suite 200, 401-9th Ave S.W.
Calgary, AB T2P 4Z4
Attention: Interline Director

with a copy to:

Interline Agreements Manager U.S.
Canadian Pacific Railway
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta Canada T2P 4Z4

if to IANR:

General Counsel Iowa Northern Railway Company
Paramount Theatre Building
305 Second Street Southeast, Suite 400
Cedar Rapids, IA 52401

319-297-6000 (Telephone)
319-297-6005 (Fax)

Any notice, if given by courier, shall be deemed to have been given or made on the date delivered. Either party to this Agreement may provide changes to its address or addressees by furnishing a notice of such change to the other party to this Agreement, in the same manner as provided above for all other written notices.

ARTICLE 17

SUCCESSORS AND ASSIGNS

17.1 The rights, benefits, obligations or liabilities of IANR under this Agreement are personal to IANR and may not be assigned or subcontracted by IANR without the prior written consent of CP, which CP may withhold in its sole discretion, or grant upon such terms and conditions as CP deems in its sole discretion to be necessary or desirable in the circumstances. Any assignment or subcontracting by IANR of any right, benefit, obligation or liability of IANR under this Agreement, absent such prior written consent, shall be void. For purposes of this provision, a transfer of a controlling interest in the shares of IANR or its parent, through sale, merger or consolidation shall be deemed to be an assignment. Any request by IANR for consent to assignment shall not be unreasonably withheld by CP.

17.2 CP may assign any or all of its rights, benefits, obligations or liabilities under this Agreement with notice to IANR.

ARTICLE 18

REGULATORY APPROVAL

18.1 Should this Agreement require the prior approval of the Surface Transportation Board ("STB"), at its sole expense, IANR will initiate and thereafter diligently pursue an appropriate application or petition to secure such approval.

18.2 The parties shall assume and hold one another harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this

Agreement or the activities of the Parties hereunder, where such claims are predicated on labor protective conditions imposed by the Surface Transportation Board or its predecessor.

ARTICLE 19
GOVERNING LAW

19.1 This Agreement shall be governed and interpreted in accordance with the laws of the State of Minnesota, without regard to application of the choice of law principles thereof.

ARTICLE 20
GENERAL

20.1 Nothing in this Agreement shall limit the right of CP to admit other companies to use, operate, dispatch or maintain the Subject Trackage or any party thereof on such terms and conditions as are satisfactory to CP.

20.2 All headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

20.3 In this Agreement where the context so requires, the singular of any word includes the plural, and vice versa, the use of any term is generally applicable to any gender and, where applicable, to a corporation.

20.4 References to a "Person" shall include individuals, corporations, partnerships, associations, bodies politic and other entities, all as may be applicable in the context;

20.5 All words, terms and phrases used in this Agreement and not otherwise defined herein shall be construed in accordance with the generally accepted definition or meaning of such words, terms or phrases in the North American railroad industry.

20.6 This Agreement may not be modified or amended except in writing and executed by CP and LANR.

20.7 No waiver of any provision of this Agreement will be effective unless in writing signed by the appropriate party, and then only in the specific instance and for the specific purpose given.

20.8 This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all negotiations, representations, prior discussions and prior agreements and memorandums between the parties hereto relating to the subject matter hereof.

20.9 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

DAKOTA, MINNESOTA & EASTERN RAILROAD
d/b/a CANADIAN PACIFIC

By: _____



Printed: _____

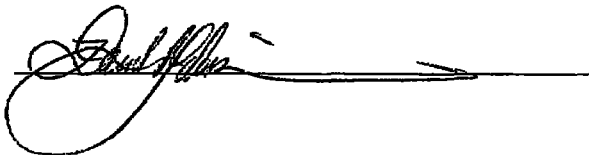
S. I. Smith

Title: _____

GENERAL MANAGER STRATEGIC NETWORK DEVELOPMENT

IOWA NORTHERN RAILWAY COMPANY

By: _____



Printed: Daniel R. Sabin

Title: President

SCHEDULE "A"

(need to add a schedule)

SCHEDULE "B"

A. Definition:

RCRI - Rail Cost Recovery Index:

The Index of Table A – West -, Annual Indexes of Chargeout prices and Wage Rates (1977–100), Materials prices, wage rates and supplements combined (excl. fuel), in the Railroad Cost Indexes issued by the Association of American Railroads. The RCRI for year 2010 is the new base index for all adjustments of the Trackage rights Fee.

B. Computation of Adjustment:

The Trackage rights Fee shall be increased or decreased annually effective on July 1, beginning in 2012, by the percentage change in the RCRI between the base year and the year immediately preceding the year in which the adjustment is to be effective. All adjustments begin with the original Trackage rights Fee and the base year index. The only variable in each annual adjustment is the index for the year immediately preceding the year in which the rate will be effective.

Example - The adjustment effective July 1, 2012 would be computed as follows:

$$\frac{\text{RCRI for 2011}}{\text{RCRI for 2010}} \times \text{current Trackage rights Fee} = \text{new Trackage rights Fee}$$